

6. Income derived from sources within this state by attorneys, physicians, engineers, accountants, and similar sources as compensation for services rendered clients in this state.

7. Compensation received by nonresident actors, singers, performers, entertainers, and wrestlers for performances in this state. See subrule 46.4(5) for an exception to this rule.

8. For compensation or wages paid prior to July 6, 1990, to nonresident employees rendering regular services for interstate common carriers such as railroads, trucking firms, airlines, bus companies, towing firms, etc., in more than one state, the wages shall be subject to Iowa withholding on that portion of the wages for services in Iowa providing more than 50 percent of the compensation paid by the carrier to such employee is earned in Iowa during the preceding calendar year. If the nonresident employee of the interstate carrier does not earn more than 50 percent of the compensation from the carrier in Iowa during the preceding calendar year, then withholding for Iowa income tax is not required. Similar provisions are likewise applicable to the wages received by nonresident employees of private property motor vehicle carriers. If the employee of the interstate common carrier or the private property carrier is a resident of Iowa, withholding on the total wages of the resident employee is required if the resident employee does not earn more than 50 percent of the compensation from the carrier in any one state. (Additional information may be obtained by referring to P.L. 91-569 as passed by the U.S. Congress and signed by the President, effective January 1, 1971.) For withholding on compensation or wages paid on or after July 6, 1990, to nonresidents or part-year residents who earn compensation in Iowa and one or more states as an employee for an interstate motor carrier or an interstate rail company, see paragraph 12 in this subrule.

9. The Iowa gross income of a nonresident, who is employed and receiving compensation for services, shall include compensation for personal services which are rendered within this state. Compensation for personal services rendered by a nonresident wholly without the state is excluded from gross income of the nonresident even though the payment of such compensation may be made by a resident individual, partnership or corporation.

10. The gross income from commissions earned by a nonresident traveling salesperson, agent or other employee for services performed or sales made whose compensation depends directly on volume of business transacted by the nonresident, includes that proportion of the total compensation received which the volume of business or sales by the employee within this state bears to the total volume of business or sales within and without the state.

11. Payments made to landlords by agents, including elevator operators, for grain or other commodities which have been received by the landlord as rent constitute taxable income of the landlord when sold by the landlord. See subrule 46.4(6) for the exemption from withholding on incomes paid on or after January 1, 1985, to nonresidents for the sale of agricultural commodities or products.

12. Wages paid on or after July 6, 1990, to nonresidents of Iowa who earn the compensation from regularly assigned duties in Iowa and one or more other states for a railway company or for a motor carrier are not taxable to Iowa. Pursuant to P.L. 101-322, the nonresidents in this situation are subject only to the income tax laws of their states of residence. Thus, when an Iowa resident performs regularly assigned duties in two or more states for a railroad or a motor carrier, the only state income tax that should be withheld from the wages paid for these duties is Iowa income tax. P.L. 101-322 was effective on July 6, 1990, and is the Amtrak Reauthorization and Improvement Act of 1990.

46.4(3) Nonresident certificate of release. Where a nonresident payee makes the option to pay estimated Iowa income tax, a certificate of release from withholding will be issued by the Iowa department of revenue and finance, estimate tax section, to the designated payers. The certificate of release will be forwarded to the specified withholding agent(s) and payer(s), and will state the amount of income covered by the estimated tax payment. Any income paid in excess of the amount so stated will be subject to withholding tax at the current rate. See 701—Chapter 49 for information on making estimate payments.

46.4(4) *Recovering excess tax withheld.* A nonresident payee may recover any excess Iowa income tax withheld from income of the payee by filing an Iowa income tax return after the close of the tax year and reporting income from Iowa sources in accordance with the income tax return instructions.

46.4(5) *Exemption from withholding of nonresidents engaged in film production or television production in this state.* For tax years beginning on or after January 1, 1986, nonresidents engaged in film production or television production in this state are not subject to state withholding on wages earned from this activity if the nonresidents' employer has applied to the department for exemption from withholding of state income tax and the employer's application includes the following information about the nonresident employees:

- a. The employees' names.
- b. The employees' permanent mailing addresses.
- c. The employees' social security numbers.
- d. The estimated amounts the employees are to be paid for services provided by the employees in this state.

The employer's application for exemption from withholding for the nonresident employees will not be approved by the department if the employer fails to provide all the required information.

Only those nonresident employees described in the application for exemption from withholding will be covered when the application is approved by the department. If additional nonresident employees are hired after the initial application for exemption is filed, those employees should be described in an amendment to the application for exemption which must be filed with the department of revenue and finance.

Applications for exemption from withholding for nonresident employees engaged in film production or television production should be directed to the Taxpayer Services Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

46.4(6) *Retroactive exemption from withholding of state income tax from income payments made to nonresidents by withholding agents for the sale of agricultural commodities or products if the withholding agents making the income payments provide the department of revenue and finance with certain information about the sales.* Retroactive to January 1, 1985, withholding agents are not required to withhold state income tax from income payments made to nonresidents or representatives of the nonresidents for the sales of agricultural commodities or products, if the withholding agents provide certain information to the department of revenue and finance about the sales. The following paragraphs describe the agricultural commodities and products that are included in the exemption from withholding, specify the information needed on the sales and clarify other issues related to the exemption from withholding. Subrule 49.3(3) describes an election for withholding agents to make estimate payments on behalf of nonresident taxpayers for net incomes of the nonresidents from agricultural commodities or products in tax years beginning on or after January 1, 1989.

- a. Agricultural commodities or products included in the exemption from withholding. Withholding agents are not required to withhold state income tax from income payments they make on or after January 1, 1985, to nonresidents or representatives of the nonresidents for the sale of commodity credit certificates, grain (corn, soybeans, wheat, oats, etc.), livestock (cattle, hogs, sheep, horses, etc.), domestic fowl (chickens, ducks, turkeys, geese, etc.), or any other agricultural commodities or products, if the withholding agents provide the department of revenue and finance with the information specified in paragraph "b" of this subrule.

b. Information to be provided to the department for years beginning in 1988 by withholding agents claiming exemption from withholding on income payments made to nonresidents for the sales of agricultural items. The following information is to be provided on a listing to the department of revenue and finance by withholding agents electing exemption from withholding of state income tax on income payments, made in the calendar year, starting with the 1988 year, to nonresidents or representatives of the nonresidents on the sales of agricultural commodities or products made in the year:

- (1) Name of the nonresident (last name, first name and middle initial).
- (2) Home address of the nonresident.
- (3) Social security number of the nonresident.
- (4) Aggregate payments made in the calendar year for the nonresident (includes payments made to a representative of the nonresident on behalf of the nonresident).
- (5) Nexus verification—Two digit Iowa county code number of the first one of the following that applies to the nonresident:
 1. County in which the nonresident owns real property or personal property.
 2. County in which the nonresident leases real property or personal property.
 3. County in which the nonresident has agricultural products stored or livestock was located.
 4. County where the nonresident has performed custom farming activities in the year.
 5. County where the nonresident has other business activities in Iowa other than merely sales activities.

If a nonresident does not own or lease property in Iowa or have other nexus or connection with Iowa as described in 46.4(6)“*b*”(5), items “3,” “4,” and “5,” the nonresident is not subject to Iowa income tax on the income payments for agricultural commodities or products and the nonresident’s income payments should not be included on the listing.

In a situation where a withholding agent is unable to get all the information that is to be provided to the department on income payments on sales of agricultural items, the agent is relieved of the requirement to withhold if the agent can provide written evidence showing an attempt was made to acquire all the information.

The listing of aggregate income payments to nonresidents with an Iowa nexus for sales of agricultural commodities and products in the calendar year should be sent to the department by the withholding agent on or before April 1 of the year following the year in which the income payments were made. In lieu of the listing, the withholding agent may compile the information on aggregate income payments to nonresidents on a magnetic tape, provided the tape meets departmental guidelines described in rule 701—8.31(421,422).

The listing or magnetic tape should be sent to the following address: Iowa Department of Revenue and Finance, Audit and Compliance Division, Individual Section, Hoover State Office Building, P.O. Box 10456, Des Moines, Iowa 50306.

A withholding agent is not exempt from withholding of state income tax on income payments to nonresidents on sales of agricultural commodities or products if the withholding agent does not provide the department of revenue and finance with information on income payments made during the year by April 1 of the subsequent year.

c. Information which may be required from withholding agents claiming exemption from withholding on income payments made in the 1985, 1986, and 1987 years. Withholding agents claiming exemption from withholding of state income tax on income payments made to nonresidents for sales of agricultural commodities or products in 1985, 1986, and 1987 may be required to provide the department of revenue and finance the same information on the sales transactions as was described in 46.4(6)“*b*,” paragraphs (1) to (5). However, the withholding agent is not to submit the information to the department unless the withholding agent receives a specific request for the information from the department of revenue and finance.

Withholding agents claiming exemption from withholding of state income tax from income payments made in 1985, 1986, and 1987 to nonresidents on sales of agricultural commodities and products are not exempt from withholding if the withholding agents do not provide the information on the sales transactions which is requested by the department of revenue and finance.

Claims for refund for withholding tax that was paid for income payments made in 1985, 1986, and 1987 will be approved to the extent the withholding tax was attributable to income payments to nonresidents for the sales of agricultural commodities and products and to the extent that the claims for refund were made within the statute of limitations for refunds provided in Iowa Code section 422.73. Therefore, the refund claims will be considered valid if the claims were filed within three years of the date the withholding tax was due or within one year from the time the withholding tax was paid, whichever time is later.

46.4(7) *Exemption from withholding of payments made to nonresidents for deferred compensation, pensions, and annuities.* For tax years beginning on or after January 1, 1992, state income tax withholding is not required from payments of deferred compensation, pensions, and annuities made to nonresidents of Iowa which are attributable to personal services of the nonresidents in Iowa. However, the payments are subject to Iowa income tax except in situations where the deferred compensation, pension, or annuity was earned from personal services in Iowa by Illinois residents during the period where the Iowa-Illinois reciprocal agreement was applicable.

Effective for payments of deferred compensation, pensions and annuities made to nonresidents of Iowa on or after January 1, 1993, payers of these payments can elect to withhold Iowa income tax from the payments if the payers choose to withhold Iowa income tax and the recipients of the payments request that Iowa income tax be withheld.

This rule is intended to implement Iowa Code sections 422.15, 422.16, 422.17, and 422.73.

701—46.5(422) *Penalty and interest.* Renumbered as 701—10.50(422), IAB 1/23/91.

701—46.6(422) *Withholding tax credit to workforce development fund.* Upon payment in full of a certificate of participation or other obligation issued to fund a job training program under Iowa Code chapter 260E which occurs on or after July 1, 1995, the community college which provided the training is to notify the Iowa department of economic development of the amount paid by the employer or business to the community college during the previous 12 months. The Iowa department of economic development is to notify the department of revenue and finance of this amount. The department is to credit 25 percent of this amount to the workforce development fund in each quarter for the next ten years from the withholding tax paid by the employer or business. If the withholding tax paid by the employer or business for a quarter is not sufficient to cover the sum to be credited to the workforce development fund, the sum to be credited is to be reduced accordingly. The aggregate amount from all employers to be transferred to the workforce development fund in a year is not to exceed \$8 million for fiscal years beginning on or after July 1, 2000. For purposes of this rule, “year” means the period from July 1, 1995, through June 30, 1996, the period from July 1, 1996, through June 30, 1997, and subsequent fiscal year periods.

This rule is intended to implement Iowa Code section 422.16A as amended by 2000 Iowa Acts, chapter 1230.

701—46.7(422) ACE training program credits from withholding. The accelerated career education (ACE) program is a training program administered by the Iowa department of economic development to provide technical training in state community colleges for employees in highly skilled jobs in the state to the extent that the training is authorized in an agreement between an employer or group of employers and a community college for the training of certain employees of the employer or group of employers. If a community college and an employer or group of employers enter into a program agreement for ACE training, a copy of the agreement is to be sent to the department of revenue and finance. No costs incurred prior to the date of the signing between a community college and an employer or group of employers may be reimbursed or are eligible for program job credits, including job credits from withholding unless the costs are incurred on or after July 1, 2000.

46.7(1) The costs of the ACE training program may be paid from the following sources: (a) program job credits which the employer receives on the basis of the number of program job positions agreed to by the employer for the training program, (b) cash or in-kind contributions by the employer toward the costs of the program which must be at least 20 percent of the total cost of the program, (c) tuition, student fees, or special charges fixed by the board of directors of the community college to defray costs of the program, (d) guarantee by the employer of payments to be received under “a” and “b” of this subrule. This rule pertains only to the program job credits from withholding described in “a.”

46.7(2) ACE training programs financed by job credits from withholding. In situations when an employer and a community college have entered into an agreement for training under the ACE program and the agreement provides that the training will be financed by credits from withholding, the amount of funding will be determined by the program jobs credits identified in the agreement. Eligibility for the program job credits is based on certification of program job positions and program job wages by the employer at the time established in the agreement with the community college. An amount of up to 10 percent of the gross program job wage as certified by the employer in the agreement shall be credited from the total amount of Iowa income tax withheld by the employer. For example, if there were 20 employees designated to be trained in the agreement and their gross wages were \$600,000, the gross program job wage would be \$600,000. Therefore, 10 percent of the gross program job wage in this case would be \$60,000, and this amount would be credited against Iowa income tax which would ordinarily be withheld from the wages of all employees of the employer and remitted to the department of revenue and finance on a quarterly basis. The amount credited against the withholding tax liability of the employer would be paid to the community college training the employer’s employees under the ACE program. The employer may take the credits against withholding tax on returns filed with the department of revenue and finance until such time as the program costs of the ACE program are considered to be satisfied.

This rule is intended to implement Iowa Code sections 260G.4A as amended by 2001 Iowa Acts, chapter 99, and 422.16.

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